

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
(WESTERN DIVISION)

IN RE MERCY HEALTH ERISA LITIGATION

Civil Action No.: 1:16-cv-00441-SJD

**PLAINTIFF DAVID LUPP'S RESPONSE TO DEFENDANTS' FIRST AND SECOND
NOTICES OF SUPPLEMENTAL AUTHORITY**

Plaintiff David Lupp ("Plaintiff Lupp") submits this response to Defendants' Notice of Supplemental Authority (Dkt. No. 51) and Second Notice of Supplemental Authority (Dkt. No. 54). The decisions provide little additional information to guide the Court with respect to whether all discovery in *this* action should be stayed. The decisions in *Curtis v. Wheaton Franciscan Services, Inc.*, No. 16 C 4232 (N.D. Ill.) (Dkt. No. 51-1) and *Holcomb v. Hospital Sisters Health System*, No. 3:16-cv-03282 (C.D. Ill.) (Dkt. No. 54-1) are almost entirely devoted to the question of which counsel should be appointed under Rule 23(g); *Holcomb* only address the issue of a stay in a conclusory sentence on page 4, while *Curtis* provides a bare two sentences on page 2.

The final decision submitted by Defendants, *Owens v. St. Anthony Medical Center, Inc.*, No. 1:14-cv-04068 (ND Ill.) (Dkt. No. 54-2), addresses the issues in slightly greater depth. The *Owens* court determined that the issues the Supreme Court will be considering "in *Stapleton* and its companion cases . . . are so central to this case that any further efforts at litigation would require bifurcated motions practice and duplicative filings." *Id.* In the present case, however, as noted in Plaintiff Lupp's Position Statement Regarding Whether to Stay the Instant Action (Dkt. No. 46), there are discrete matters at issue in the present case that will not be affected by the Supreme Court's resolution of *Stapleton* and the companion cases, and there is nothing to be

gained in delaying discovery into those issues for months while the Supreme Court deliberates.

See Dkt. No. 46, at 2-3.

Dated: February 1, 2017

Respectfully submitted,

By: /s/ Mark K. Gyandoh

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CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2017, a true and correct copy of the foregoing document was filed with the Court utilizing its ECF system, which will send notice of such filing to all counsel of record.

/s/ Mark K. Gyandoh
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